



December 30, 1999

Mr. Paul F. Wieneskie
Cribbs & McFarland
P.O. Box 13060
Arlington, Texas 76094-0060

OR99-3813

Dear Mr. Wieneskie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130930.

The City of Euless Police Department (the "city") received a request for incident reports involving a particular suspect and relating to a 1980 or 1981 rape case in a specified apartment complex. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with a common-law right to privacy, or, in the alternative, under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). We first note that the police department identified numerous offenses involving the named suspect; however, the city is not required to release information not requested. In fact, in interpreting the request to be for all incidents concerning the named suspect, the city is imposing on itself the burden of compiling a criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other

states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). The city, therefore, must withhold any compilation of the referenced individual's criminal history pursuant to section 552.101, including any of the documents submitted to this office which do not involve an allegation of rape in 1980 or 1981.

Six pages of documents do apparently involve a 1980 rape. You contend that information identifying the victim and any detailed descriptions of the offense are protected by common-law privacy pursuant to section 552.101 and *Industrial Foundation*. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and the information is of no legitimate concern to the public. *See id.* Information that either identifies or tends to identify a victim of sexual assault is protected from public disclosure based on the common-law right to privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). We conclude that the city must not release to the public any information that furnishes a basis for identification of the victim. In addition, the offender's social security number may be confidential.¹ The city must release the six pages we have identified as relating to the 1980 rape, redacted to protect the victim's identity. The city's highlighted passages on those six pages may be redacted, except for the information identifying the two people at the pool. You have not established the applicability of section 552.108 to this information.

You refer to Open Records Decision Nos. 628 (1994) and 297 (1981) in support of an argument to withhold details of the offense and the information identifying the two pool side individuals. Those decisions recognize that the information you seek to withhold is of a type generally open, but which may be withheld only if disclosure would "unduly interfere with law enforcement." *Id.* at 2, 2. Gov't Code § 552.108. In closed cases the law enforcement agency must show:

¹Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Michels Anderson", with a long horizontal flourish extending to the right.

Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 130930

Encl. Submitted documents

cc: Mr. Chad Lewis McMinn
514 West 8th Street
Irving, Texas 75060
(w/o enclosures)

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

Id. No witnesses to any offense are identified in the documents we have determined the city must release, nor have you provided any evidence of possible intimidation, harassment, or harm to future cooperation of witnesses in this eighteen-year-old case. Therefore, you have not shown that release of this information would interfere with law enforcement under section 552.108(a)(1), nor have you established the applicability of another provision of section 552.108. The city may not withhold any additional information pursuant to section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).